



SOCIAL SECURITY ADMINISTRATION

20 CFR Part 418

[Docket No. SSA-2010-0033]

RIN 0960-AH24

Amendments to Regulations Regarding Eligibility for a Medicare Prescription Drug Subsidy

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: This final rule adopts, without change, the interim final rule with request for comments we published in the Federal Register on December 29, 2010. The interim final rule incorporated changes to the Medicare prescription drug coverage low-income subsidy (Extra Help) program made by the Patient Protection and Affordable Care Act (Affordable Care Act) enacted in March 2010. Under our interpretation of section 3304 of the Affordable Care Act, if the death of a beneficiary's spouse would decrease or eliminate the subsidy provided by the Extra Help program, we will extend the effective period of eligibility for the most recent determination or redetermination until one year after the month following the month we are notified of the death of the spouse. The effective date of this provision was January 1, 2011. We also revised our regulations to incorporate changes made by the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) which affect the way we account for income and resources when determining eligibility for the Extra Help program. The statute provides that we no longer

count the value of any life insurance policy as a resource for Extra Help effective on and after January 1, 2010. As of that date, we also no longer count as income the help a beneficiary receives when someone else provides food and shelter, or pays household bills for food, mortgage, rent, electricity, water, property taxes, or heating fuel or gas. These revisions updated our rules to reflect these statutory changes.

DATES: The interim final rule with request for comments published on December 29, 2010, is confirmed as final effective [INSERT DATE OF PUBLICATION].

FOR FURTHER INFORMATION CONTACT: Craig Streett, Office of Income Security Programs, Social Security Administration, 2-R-24 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-9793. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION:

Background

This final rule adopts, without change, the interim final rule with request for comments we published in the Federal Register on December 29, 2010, at 75 FR 81843. The interim final rule changed the way we account for income and resources when determining eligibility for the subsidy provided by the Extra Help program, and removed

certain items from those we will count as income and resources. In addition, the interim final rule extended the effective date of a determination or redetermination of an Extra Help subsidy when there is a death of a spouse.

Medicare prescription drug coverage is a voluntary program that covers various prescription drugs. The regulations and requirements for the program are codified in 42 CFR Part 423. The Centers for Medicare & Medicaid Services (CMS) promulgates rules and regulations concerning the Medicare program. Anyone who meets the requirements listed in 42 CFR 423.30(a) can enroll in Medicare prescription drug coverage. Medicare prescription drug coverage beneficiaries are generally responsible for deductibles, cost-sharing, and monthly premiums towards the cost of covered prescriptions.

Beneficiaries with Medicare prescription drug coverage who have limited income and resources may qualify for Extra Help with their monthly premiums, deductibles, and cost-sharing for Medicare prescription drug coverage. To qualify for Extra Help, a Medicare beneficiary must reside in one of the fifty states or the District of Columbia and must have resources and income within specific limits.

Congress enacted MIPPA in July of 2008.¹ Section 116 of MIPPA exempts certain items from income and resources determinations of Extra Help eligibility on or after January 1, 2010. We apply these exemptions to applications filed and

¹Medicare Improvements for Patients and Providers Act of 2008, Pub. L. No. 110-275, 122 Stat. 2494 (2008).

redeterminations initiated on or after January 1, 2010. The items exempted under section 116 are the value of life insurance and in-kind support and maintenance.

To implement these requirements of MIPPA, we issued guidance in August 2009 and discontinued counting these exempted items for applications and redeterminations in accordance with the requirements of the statute. Accordingly, we no longer count as income the help a beneficiary receives when someone else provides food and shelter, or pays for food, mortgage, rent, heating fuel, gas, electricity, water, or property taxes. To reflect these statutory exemptions, we revised sections 418.3335(b) and 418.3350 and deleted section 418.3345 of our regulations in the interim final rule that we published in December 2010.

In March 2010, Congress passed the Affordable Care Act, which extends the effective date of a determination or redetermination of an Extra Help subsidy due to the death of a spouse.² In our previous rules, any adjustment in the amount of Extra Help the beneficiary receives was effective the month after the month in which we are notified of the death of a spouse. In some cases, the death of a spouse would result in a decrease in the amount of Extra Help or loss of Extra Help eligibility for the beneficiary.

Effective January 1, 2011, if the death of the spouse would decrease or eliminate the subsidy provided by the Extra Help program, we extend the effective period for a determination or redetermination until one year after the date on which it would

² The Patient Protection and Affordable Care Act, Pub. L. No. 111-148 §3304.

otherwise cease to be effective—that is, the month after the month we are notified of the death of the spouse. In order to reflect the changes made by the Affordable Care Act, we revised sections 418.3120 and 418.3123 of our regulations.

Prior to the publication of our interim rule, our regulations at 418.3350(b) stated that we did not count as income the unearned income described in sections 416.1124(b), (c)(1) through (c)(12), and (c)(14) through (c)(21). Those rules omitted a reference to paragraph 416.1124(c)(22) that we added after the publication of section 418.3350 in December 2005. We updated the reference in section 418.3350 to correct this omission. This was a technical change only and did not affect the substance of our rules.

Public Comments

On December 29, 2010, we published an interim final rule with request for comments in the Federal Register at 75 FR 81843 and provided a sixty-day comment period. We received five comments. We carefully considered the concerns expressed in these comments but did not make any changes to the final rule.

We summarized the commenters' views and responded to the significant issues raised that are within the scope of the interim final rule.

Comment: A commenter expressed gratitude for the cessation of counting as income the help low-income subsidy recipients receive when someone else pays household bills.

Response: We appreciate the comment and value the public's input on regulatory changes. Changes in the Medicare Improvements for Patients and Providers Act of 2008 have made it easier for people to qualify for Extra Help with their Medicare prescription drug plan costs.

Comment: An organization expressed support for our efforts to expand eligibility for low-income subsidy and would like the expansion efforts to go further. The organization believes it would be appropriate to eliminate the asset test (resource limits) for Extra Help with Medicare prescription drug plan costs. The organization stated that the Extra Help asset test is highly restrictive, preventing millions of low-income Part D enrollees from benefiting from Extra Help, and unnecessarily complicates the application process, potentially discouraging qualified enrollees from applying to the program. The organization also stated that an asset test is inappropriate for Medicare beneficiaries, as Americans should be encouraged to save for retirement.

Response: We cannot adopt this comment because the resources eligibility standards for the Extra Help program are statutory. Elimination or adjustment to statutory requirements is beyond the scope of these regulations.

Comment: An organization expressed concern about contacting the surviving spouse of a low-income subsidy eligible couple when we determine that we will defer the redetermination for one year. The organization believes this correspondence may cause

unnecessary anxiety to the widow/widower.

Response: We are unable to adopt this suggestion. The death of a spouse is a subsidy-changing event (SCE). We send a redetermination form whenever an SCE report is received as required in 20 CFR §418.3120(b)(1). We use the information to determine if the event will affect the Extra Help subsidy. In some cases, contact with the widow/widower will result in an increase in the Extra Help subsidy. If the subsidy decreases, we will extend the effective period of the determination or redetermination for at least one year from the spouse's death.

Comment: An organization believes that we should provide a more comprehensive definition of "in-kind support and maintenance" in 20 CFR §418.3335, either by providing examples or referencing the appropriate link.

Response: We cannot adopt this comment at this time because it is not within the scope of the present regulatory change, which is based on statutory changes. However, we agree that a more comprehensive definition of "in-kind support and maintenance" may be appropriate in 20 CFR §418.3335(b). We will consider publishing a separate Notice of Proposed Rulemaking to add a sentence to the end of §418.3335(b) explaining that "Shelter includes room, rent, mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection services."

Comment: An organization asked us to consider clarifying that life insurance refers to

the cash surrender value of the life insurance that is under 20 CFR §418.3425.

Response: We are unable to adopt this suggestion because the statutory exclusion is not limited to the cash surrender value of life insurance. “No part of the value of any life insurance policy shall be taken into account” in determining the resources of an individual and the eligible spouse of the individual.³

Accordingly, the interim final rule remains unchanged and we are adopting it as final.

Regulatory Procedures

Executive Order 12866 as supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this final rule meets the criteria for a significant regulatory action under Executive Order 12866 as supplemented by Executive Order 13563. Thus, OMB reviewed the final rule.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a

³ Medicare Improvements for Patients and Providers Act of 2008, Pub. L. No. 110-275, 122 Stat. 2494 (2008).

substantial number of small entities, because they affect individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

These rules do not create any new or affect any existing collections and, therefore, do not require Office of Management and Budget approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 93.770, Medicare Prescription Drug Coverage; 96.002 Social Security—Retirement Insurance.)

List of Subjects in CFR Part 418

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Medicare subsidies.

Michael J. Astrue,
Commissioner of Social Security.

Accordingly, the interim rule amending 20 CFR chapter III, part 418, subpart D that was published at 75 FR 81843 on December 29, 2010, is adopted as a final rule without change.

[FR Doc. 2012-827 Filed 01/17/2012 at 8:45 am; Publication Date: 01/18/2012]